

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of

The Verizon Telephone Companies)	
Tariff FCC Nos. 1, 11, 14 and 16,)	WC Docket No. 02-317
Transmittal No. 226)	

**REBUTTAL COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Commission's Order released October 7, 2002,¹ the United States Telecom Association (USTA)² respectfully submits its rebuttal comments to the oppositions filed on November 12, 2002 (the Oppositions), in the Direct Case of Verizon Telephone Companies (Verizon), which Verizon submitted to the Federal Communications Commission (the FCC or the Commission) on October 29, 2002 (Direct Case).³ Verizon filed tariff Transmittal No. 226 (Transmittal 226) to become effective August 9, 2002.⁴ The FCC suspended Verizon's tariff for five months, pending an investigation to determine whether the revised security deposit and advance payment provisions proposed in Transmittal 226 are reasonable and not so vague as to permit Verizon to discriminate unreasonably against its interstate access customers. USTA supports Verizon's Direct Case because it believes that the provisions regarding security deposits and advance payments detailed in Transmittal 226 are reasonable and just and should be

¹ *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Order, DA 02-2522 (rel. Oct. 7, 2002).

² USTA is the nation's oldest trade association for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

³ *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Direct Case of Verizon Redacted Public Version (Oct. 29, 2002) (Verizon Direct Case).

⁴ Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226 (Aug. 6, 2002) (Transmittal 226).

implemented to ensure Verizon's continued ability to serve its customers. USTA urges the Commission to grant Verizon's request in Transmittal 226.

DISCUSSION

The FCC must move quickly to develop guidelines allowing Verizon and other incumbent local exchange carriers (ILECs) to protect themselves from financial turmoil in the telecommunications industry. USTA has advocated implementation of measures to ensure that the interests of all telecommunications carriers and their customers are fairly balanced.⁵ USTA strongly urges the FCC and state regulators to allow companies such as Verizon to take reasonable measures, such as those proposed by Verizon in Transmittal 226, in advance of any given interconnecting carrier's bankruptcy to assure that ILECs will receive payments for their services, either in the form of permitting tariff changes, allowing ILECs to require advance deposits from financially doubtful interconnecting carriers, or allowing advance billing and/or prepayment for anticipated services.⁶

Under Verizon's current tariff, Verizon may require deposits from customers who have a proven history of late payments or who have not established credit. Under Transmittal 226,

⁵ See *In the Matter of Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202, Comments of the United States Telecom Association (Aug. 15, 2002) (USTA Comments) at 8.

⁶ USTA has advocated five other principles to balance the interests of ILECs and their customers. First, after an interconnecting carrier's bankruptcy petition, the FCC should defer to the bankruptcy law and rules, which require payment (or adequate assurances of payment) for post-petition services so as to preserve the abilities of the numerous supplier-carriers to continue to provide services. Second, in the event that supplier-carriers are unable to recover all debt owed them for services (either pre-petition or post-petition) in a bankruptcy proceeding of an interconnecting carrier, supplier-carriers should be allowed to recover this cost through some clear pricing mechanism provided by the FCC. Third, any such mechanism should also allow the recovery of unbundled network element charges defaulted on by a bankrupt interconnecting carrier. Fourth, the FCC should support the application, to supplier-carriers as holders of "executory contracts" with interconnecting carriers, of the Bankruptcy Code's "cure" provisions whereby pre-petition services remaining unpaid at the time of a bankruptcy filing must first be paid ("cured") by a defaulting interconnecting carrier before that carrier can continue to benefit, post-petition, from its preexisting relationships with ILECs such as Verizon. Finally, the FCC should provide streamlined mechanisms for the orderly transfer of customers and facilities from a liquidating interconnecting carrier to such a carrier that will assume the liquidating carrier's service obligations, facilities and the obligation to "cure" pre-petition defaults.

Verizon would be able to require additional security deposits or advance payments from customers who (1) fall in arrears in their account balances in any two months out of any consecutive twelve-month period; (2) fall 30 or more days past due with a payment of \$250,000 or more; (3) (or whose parent companies) inform Verizon or publicly state that they are unable to pay their debts as debts become due; (4) commence voluntary or involuntary receivership or bankruptcy; (5) have debt securities or whose parent company's debt securities are below investment grade as defined by the Securities and Exchange Commission; or (6) have senior debt or whose parent company's have senior debt that is rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are reviewed for a possible downgrade.⁷ These tariff revisions would allow Verizon to decide whether late-paying customers would make advance payments or provide security deposits. Verizon would refund security deposits after one year of prompt payment if a customer did not trigger any of the six criteria listed above for more than one year. Under Transmittal 226, Verizon would give a customer seven days notice – rather than 30 days under the current tariff – before refusing to process orders or discontinuing service.

USTA fully supports Verizon's justifications for Transmittal 226 set forth in the Direct Case. As Verizon notes, "The telecommunications industry is in a period of unprecedented financial stress and upheaval."⁸ Now more than ever, ensuring continuity of service by limiting the financial fallout from companies facing bankruptcy is of utmost importance. This is particularly challenging because not only must companies such as Verizon find ways to continue

of the bankrupt carrier. USTA believes that these proposals best safeguard the continued ability of ILECs to service their local communities in the fashion demanded by federal and state laws. *See* USTA Comments at 8-10.

⁷ Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal 226 (Aug. 9, 2002) (Transmittal 226) at 3-4.

⁸ Transmittal 226 at 6.

delivering service to customers of bankrupt carriers, they must find ways to do so without being dragged down with financially-troubled carriers.

USTA believes that the FCC should not permit the troubles of failing carriers to be inflicted on the entire industry or any particular providing carrier. Verizon and other ILECs cannot afford to absorb hundreds of millions of dollars of costs each month providing service to companies that cannot pay for service. Unlike carriers that have the option to refuse to provide service, ILECs are required by law to provide service upon demand. If forced to provide service to bankrupt or uncreditworthy customers without being permitted to implement reasonable measures to protect against the risk of nonpayment, the financial health of ILECs as well as their ability to serve customers will suffer enormously.

Those filing the Oppositions disingenuously respond to Verizon's proposals to protect itself from the risk of bad debt by stating that Verizon faces no increased risk. AT&T, for example, says Verizon's proposals are in response to "a largely nonexistent problem."⁹ Sprint says that the impact of the massive accounting scandals and bankruptcies of companies such as WorldCom, Qwest Communications International Inc., Global Crossing Ltd. and Adelphia Communications Corporation are "an aberration," that they do not reflect a structural change in the market.¹⁰ Allegiance Telecom, Inc. et al. argue that there is not a crisis in the telecommunications industry, stating, "The rash of bankruptcies that plagued the industry has eliminated the weakest competitors, and there is no legitimate basis to believe that the remaining competitors present the same level of bad debt risk that Verizon may have faced in the past two

⁹ *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, AT&T Opposition to Direct Case (Nov. 12, 2002) (AT&T Opposition) at 2.

¹⁰ *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Sprint Corporation Opposition to Direct Case (Nov. 12, 2002) at 16.

years.”¹¹ Allegiance goes on to say that Verizon proposes revisions just as the problem that the revisions address has begun to dissipate.

In fact, the problems in the telecommunications industry are not an aberration and have not dissipated. US LEC et al. have admitted as much, saying that Verizon faces “a risk in the increase in uncollectibles.”¹² Furthermore, the full impact of Global Crossing’s and MCI/WorldCom’s bankruptcy have not been felt and likely will not be felt for some time. In September, Global Crossing proposed a plan of reorganization offering its telecom creditors less than a third of their prepetition claims. Global Crossing’s plan has yet to be approved by the Bankruptcy Court, and there is no assurance that it will be effected even if approved.¹³ MCI/WorldCom is even earlier in its bankruptcy case, just recently having pushed off the date for proposing a reorganization plan another five months.¹⁴ Speculation still surrounds Qwest’s ability to avoid bankruptcy,¹⁵ and many analysts continue to advise investors that other major companies may be at risk of bankruptcy in the months ahead. For example, industry analysts are referring to the necessity of “emergency measures” at Lucent, once the leading telecom researcher and a showplace for American innovation.¹⁶ USTA urges the FCC to recognize that it would be a serious miscalculation to force healthy carriers, including Verizon, to suffer financial hardship in an attempt to salvage bankrupt or financially unstable carriers.

¹¹ *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Opposition to Direct Case of Allegiance Telecom, Inc., Broadview Networks, Inc., Cable & Wireless, KMC Telecom Holdings Corp., Talk America Inc., and XO Communications, Inc. (Nov. 12, 2002) (Allegiance Opposition) at 10.

¹² *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Opposition to Direct Case filed by US LEC Corp, Level 3 Communications, LLC, Focal Communications Corporation, PAC-West Telcomm, Inc., Business Telecom, Inc., ATX Communications, Inc., DSLnet Communications, LLC, U.S. TelePacific Corp. d/b/a TelePacific Communications, and Freedom Ring Communications, LLC d/b/a Bayring Communications (Nov. 12, 2002) (US LEC Opposition) at 5.

¹³ *In re Global Crossing Ltd., et al.*, Bankr. No. 02-40188, DE 1754 (Bankr.S.D.N.Y. 9/16/02)

¹⁴ *In re WorldCom, Inc.*, Bankr.No. 02-13533, DE 1999 (Bankr.S.D.N.Y. 11/15/02).

¹⁵ See “Understanding the Risks and Responses to Vendor Bankruptcy,” Phone + (Oct. 2002); <http://www.phoneplusmag.com/articles/2A1TAG.html>.

USTA believes that Verizon must be able to protect its ability to obtain payment for services it is legally required to provide to failing companies. Several carriers have opposed the FCC's approval of Transmittal 226, asserting that requiring a security deposit or advance payment is unjust, unreasonable and discriminatory, that Verizon's revised tariff is vague and ambiguous, and that Verizon has too much discretion in determining when to require such payments. Many of those filing Oppositions, questioned Verizon's motives and declared that the suggested tariff revisions are not aimed at deadbeat or bankrupt customers at all but at Verizon's competitors.¹⁷ These carriers cite high rates of return and low risk of uncollectibles in 2001¹⁸ to bolster their claims that Verizon is using the WorldCom bankruptcy as an excuse to put them out of business. USTA strongly disagrees with all of these assertions.

Those filing Oppositions have found fault with every trigger for deposit or advance payment proposed by Verizon because they want Verizon to shoulder all of the risk of lost payments in the wake of bankruptcy filings.¹⁹ None of the companies filing Oppositions offers constructive suggestions for alternative triggers for requiring advance payments or deposits or other protections. They merely belittle Verizon's concerns and indulge in inflammatory RBOC-bashing, blaming Verizon for the business failures that resulted from their own poor business plans and mismanagement.²⁰ Despite Verizon's offering the alternative of letters of credit or advance payments in lieu of security deposits, these carriers complain about the inflexibility of

¹⁶ "Can Lucent Find the Light?" *E-Commerce News*, (10/25/2002).

¹⁷ *See, e.g.*, AT&T Opposition at 25.

¹⁸ *See, e.g.*, Allegiance Opposition at 3.

¹⁹ Furthermore, the carriers objecting to Verizon's proposed tariff provisions have objected to every ILEC's attempt to adopt deposit or advance payment provisions, no matter the terms. *See* Verizon Direct Case at 3.

²⁰ *See, e.g.*, US LEC Opposition at 5-6. US LEC et al. state that a better way for Verizon to avoid the risks of bad debt is to "honor its obligations under the Telecom Act and actually consider taking a more cooperative position with CLECs." US LEC goes so far as to blame Verizon for other carrier's insolvency when it states, "It should come as no surprise to Verizon that its anticompetitive conduct could eventually render carriers insolvent or unable to pay their bills."

Verizon's proposed approach.²¹ They want Verizon to be forced to provide service without promise of compensation because they did not plan adequately: As one carrier admits, the capital transfer contemplated by Verizon's proposed tariff revisions is not accounted for in the business plans of its local competitors.²² Those filing Oppositions claim that Verizon's high rates of return and low rate of uncollectibles in 2001 ensure that Verizon will not be forced to provide service without compensation in the future,²³ ignoring the fact that Verizon's interstate uncollectible revenues more than doubled in 2001 from 2000²⁴ and that Verizon is currently party to 92 different bankruptcy proceedings.²⁵ Furthermore, the full extent of the bankruptcy crisis is not yet evidenced in Verizon's financials. WorldCom, for example, did not declare bankruptcy until July 2002. Verizon's proposed tariff changes are designed to protect it from a new threat, one not seen in its figures for 2001 or accounted for in any company's business plan, including Verizon's. Verizon should not be forced to be the guarantor of WorldCom's or any other company's bad debt. It should be entitled to take steps to reduce the risk of nonpayment, thereby ensuring its own viability and that of the telecommunications industry in general.

In order to ensure Verizon's continued ability to serve its local communities as required by law and for the other reasons stated above, USTA asks the FCC to act expeditiously to approve Verizon's Transmittal 226. Even if the FCC does not approve the specific triggers for requiring security deposits and advance payments proposed by Verizon in Transmittal 226, it

²¹ See, e.g., *In the Matter of Verizon Telephone Companies, Tariff Nos. 1, 11, 14 and 16*, WC Docket No. 02-317, Opposition of Nextel to Verizon Direct Case (Nov. 12, 2002) at 4.

²² Allegiance Opposition at 5.

²³ For example, in its opposition, US LEC et al. state the ARMIS data indicates that the risk of losses from non-payment has not increased substantially since the passage of the Telecommunications Act of 1996. See US LEC Opposition at ii. This argument is beside the point: the justification for Transmittal 226 is not that risk has increased in what has been an historically stable market but rather that risk has recently increased exponentially due to unprecedented events such as the WorldCom bankruptcy.

²⁴ Transmittal 226 at 9.

²⁵ Transmittal 226 at 6.

nonetheless must recognize that ILECs need commercially reasonable means to insulate themselves from the heretofore unimagined and unprecedented financial turmoil in the telecommunications industry.

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CERTIFICATE OF SERVICE

I Indra S. Chalk, hereby certify that a copy of the foregoing ***Rebuttal Comments of the United States Telecom Association*** was distributed via U.S. Mail on this 19th day of November, 2002 to the attached service list.

A handwritten signature in cursive script, reading "Indra S. Chalk".

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